

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BERHANU G. KELBESSA,
11 Plaintiff,

12 v.
13 Defendants.

Case No. C17-323-RAJ
ORDER

14 **I. INTRODUCTION**

15 This matter comes before the Court on Plaintiff Berhanu G. Kelbessa's Amended
16 Complaint (Dkt. ## 20, 21), Motion to Appoint Counsel (Dkt. # 2), and Motion for
17 Extension of Time (Dkt. # 7). For the reasons that follow, the Court **DENIES** his motion
18 to appoint counsel, **DENIES as moot** his motion for extension of time, and **DISMISSES**
19 **without leave to amend** his amended complaint.

20 **II. BACKGROUND**

21 On March 1, 2017, Kelbessa filed this action alleging that Defendants have
22 committed a broad array of civil rights violations. Dkt. # 1-1. In doing so, Kelbessa
23 submitted an application to proceed *in forma pauperis*. Dkt. # 1. The Honorable Brian
24 A. Tsuchida granted his application. Dkt. # 3.

25 On April 5, 2017, the Court dismissed Kelbessa's complaint. The Court did so
26 pursuant to 28 U.S.C. § 1915(e)(2)(B), which requires the Court to dismiss the complaint
27 of an *in forma pauperis* plaintiff if that complaint fails to state a claim. In dismissing
28 ORDER – 1

1 Kelbessa's complaint, the Court granted leave to amend. Kelbessa has since submitted
2 eleven letters. The Court construes these letters as Kelbessa's amended complaint.
3

III. DISCUSSION

A. Motion to Appoint Counsel

5 This is a civil action where, as a general matter, a plaintiff does not have a right to
6 counsel. *See Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In certain cases,
7 “exceptional circumstances” may warrant the appointment of counsel. *Agyeman v.*
8 *Corrs. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A finding of exceptional
9 circumstances requires an evaluation of both ‘the likelihood of success on the merits and
10 the ability of the petitioner to articulate his claims pro se in light of the complexity of the
11 legal issues involved.’” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)
12 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)).
13

14 The Court finds that no exceptional circumstances warrant the appointment of
15 counsel because Kelbessa is unlikely to succeed on the merits. Kelbessa's letters, which
16 the Court construes as his amended complaint, contain sprawling, largely
17 incomprehensible allegations of abuse and enslavement. He requests vast sums of money
18 in damages. *See, e.g.*, Dkt. # 21-3 (\$12,980,154,000,000). Neither these allegations nor
19 the remainder of facts alleged in Kelbessa's eleven letters demonstrate that Kelbessa is
20 reasonably likely to prevail on the merits. Because no exceptional circumstances warrant
21 the appointment of counsel, Kelbessa's motions are denied.
22

B. Amended Complaint

23 The Court's authority to grant *in forma pauperis* status derives from 28 U.S.C.
24 § 1915. The Court is required to dismiss an *in forma pauperis* plaintiff's case if the Court
25 determines that “the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on
26 which relief may be granted; or (iii) seeks monetary relief against a defendant who is
27 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous if it
28 lacks a basis in law or fact. *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). A
complaint fails to state a claim if it does not “state a claim to relief that is plausible on its
ORDER – 2

1 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007).

2 As noted, the Court previously dismissed Kelbessa’s complaint with leave to
3 amend because the complaint failed to state a claim upon which relief could be granted.
4 In doing so, the Court stated, “If Kelbessa fails to timely comply with this Order by filing
5 an amended complaint that sufficiently addresses the deficiencies noted above, the Court
6 will dismiss this action without leave to amend.” Dkt. # 16.

7 He has since amended his complaint. His amended complaint, however, fails to
8 correct the deficiencies identified by the Court. Kelbessa alleges a conclusory,
9 incomprehensible array of abuses, including enslavement, violence, economic harm,
10 neglect, and psychological abuse. He alleges trillions of dollars in damages. These
11 allegations lack any conceivable basis in fact and fail to state a plausible claim.

12 Accordingly, Kelbessa’s complaint is frivolous and fails to state a valid claim for relief.
13 The Court **DISMISSES** Kelbessa’s complaint **without leave to amend**. *Lucas v. Dep’t*
14 *of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (dismissal without leave to amend is proper
15 where “it is absolutely clear that no amendment can cure the defect”).

16 **C. Motion for Extension of Time**

17 Kelbessa requests additional time to serve Defendants. Dkt. # 7. Given the
18 Court’s foregoing analysis, the Court **DENIES** that motion **as moot**.

19 **IV. CONCLUSION**

20 For the reasons stated above, the Court **DENIES** Kelbessa’s Motion to Appoint
21 Counsel (Dkt. # 2), **DENIES as moot** his Motion for Extension of Time (Dkt. # 7), and
22 **DISMISSES without leave to amend** his amended complaint (Dkt. ## 20, 21).

23 DATED this 28th day of April, 2017.

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The Honorable Richard A. Jones
United States District Judge